

AWARD NO. 51  
Case No. 51

Organization File No. B11900107  
Carrier File No. 12(07-0584)

**PUBLIC LAW BOARD NO. 7163**

PARTIES     ) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,  
              ) INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
TO            )  
              )  
DISPUTE     ) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when it failed to assign Mr. D. Hester to work a temporary flagging position at Bay St. Louis, Mississippi on December 15 through December 20, 2006 and instead assigned junior employee S. Burch.
2. As a consequence of the violation referred to in Part (1) above, Claimant D. Hester shall now be compensated for twenty-nine (29) hours at his respective time and one-half rate of pay.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

From December 15 through December 20, 2006, the Foreman of mobile Gang 6M77 was on vacation. During this period of time, Assistant Foreman S. T. Burch, who was also assigned to Gang 6M77 relieved the foreman. Claimant, who was an Assistant Foreman on mobile Gang 6M71, is senior to Burch and asserts he should have been allowed to work the Foreman position. Both gangs

are on the Atlanta Service Lane. In support of its position, the Organization cites the following portions of Rule 3 - Selection of Positions:

Section 1. Assignment to position

In the assignment of employees to positions under this Agreement, seniority shall govern. The word "seniority" as used in this Rule means, first, seniority in the class in which the assignment is to be made, and thereafter, in the lower classes, respectively, in the same group in the order in which they appear on the seniority district roster. . . .

Section 4. Filling temporary vacancies

(a) A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur, the senior qualified available employees will be given preference, whether working in a lower rated position or in the same grade or class pending advertisement and award. When furloughed employees are to be used to fill positions under this Section, the senior qualified furloughed employees in the seniority district shall be offered the opportunity to return to service. Such employees who return and are not awarded a position or assigned to another vacancy shall return to furlough status.

\* \* \*


(f) Vacancies which are not advertised may be filled in like manner.


The Organization's claim is premised on the argument that the absence of the Foreman due to vacation created a temporary vacancy. It acknowledges that the Carrier was not obligated to fill this temporary vacancy, but argues that if it was filled it must be done on a seniority basis in accordance with Rule 3. The Carrier, on the other hand, denies that the Foreman's vacation created a vacancy. It submits that Section 4 of Rule 3 is the procedure for filling temporary vacancies pending the assignment of a regular employee. Because the Foreman would be returning to his regular assignment at the completion of his vacation, the Carrier explains the position was not out for bid and there was no pending assignment for the position.


Aside from the fact that sustaining the Organization's claim would create an administrative nightmare, the Board finds that the Agreement does not support its position. The Carrier is not

obligated to bulletin positions unless they are to be vacant for more than twenty days. Those are the types of vacancies that are filled pursuant to Rule 3, and may be filled on a temporary basis in accordance with Section 4 of that Rule until the bidding process is complete. It was certainly not contemplated by the drafters of this Rule that day-to-day vacancies, which include short term vacation vacancies, be filled through this process. The Organization, which has the burden of proof, has offered no arbitral support for its position on this point. We find, therefore, that the Agreement was not violated.

AWARD: Claim denied.

  
Barry E. Simon  
Chairman and Neutral Member

  
Roy C. Robinson  
Employee Member

  
Noel V. Nihoul  
Carrier Member  
1/26/2010

Dated: January 22, 2010  
Arlington Heights, Illinois